

ASSEMBLY BILL

No. 536

Introduced by Assembly Member Arambula

February 25, 2009

An act to amend Section 25245 of the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 536, as introduced, Arambula. Hazardous waste: financial assurances.

(1) Existing law requires the Department of Toxic Substances Control to adopt and revise standards and regulations to, among other things, specify financial assurances to be provided by an owner or operator of a hazardous waste facility that are necessary to respond adequately to provide for the cost of closure and subsequent maintenance of the facility. Existing law specifies, if the facility is required to obtain a permit under the federal Resource Conservation and Recovery Act of 1976, as amended, various mechanisms that satisfy the financial assurance obligation.

This bill, additionally, would include a financial test as a financial assurance mechanism. The bill would specifically provide that a local government owner of a hazardous waste facility would be eligible to meet its postclosure financial obligations by utilizing financial assurance mechanisms authorized by the federal act.

(2) This bill would also state that the changes made by this bill to the above provisions are declaratory of existing law.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 25245 of the Health and Safety Code is amended to read:

25245. (a) The department shall adopt, and revise when appropriate, standards and regulations ~~which~~ *that* shall do both of the following:

(1) Specify the financial assurances to be provided by the owner or operator of a hazardous waste facility that are necessary to respond adequately to damage claims arising out of the operation of that type of facility and to provide for the cost of closure and subsequent maintenance of the facility, including, but not limited to, the monitoring of groundwater and other aspects of the environment after closure. If the facility is required to obtain a permit under the federal act, the financial assurance shall be a trust fund, surety bond, letter of credit, insurance, *financial test*, or any other mechanism authorized under the federal act and the regulations adopted pursuant to the federal act. If the facility is not required to obtain a permit under the federal act, the financial assurance may include any other equivalent financial arrangement acceptable to the department. *For purposes of this section, a local government owner of a hazardous waste facility is eligible to meet its own postclosure financial assurance obligations by utilizing any of the financial assurance mechanisms authorized by the federal act and the regulations authorized by the federal act, including, but not limited to, a financial test.*

(2) Provide that every hazardous waste facility can be closed and maintained for at least 30 years subsequent to its closure in a manner that protects human health and the environment and minimizes or eliminates the escape of hazardous waste constituents, leachate, contaminated rainfall, and waste decomposition products to ground and surface waters and to the atmosphere.

(b) In adopting regulations pursuant to subdivision (a), to carry out the purposes of this chapter, the department may specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing evidence of financial responsibility.

(1) If an owner or operator is in bankruptcy, reorganization, or other arrangement pursuant to Title 11 of the United States Code, or where, with reasonable diligence, jurisdiction in any state or

1 federal court cannot be obtained over an owner or operator likely
2 to be solvent at the time of judgment, any claim arising from
3 conduct for which this section requires evidence of financial
4 responsibility may be asserted directly against the guarantor who
5 provided the evidence of financial responsibility.

6 (2) The total liability of any guarantor is limited to the aggregate
7 amount which the guarantor has provided as evidence of financial
8 responsibility to the owner or operator under this chapter.

9 (3) This subdivision does not limit any other state or federal
10 statutory, contractual, or common law liability of a guarantor to
11 the owner or operator, including, but not limited to, the liability
12 of the guarantor for bad faith in either negotiating or in failing to
13 negotiate the settlement of any claim.

14 (4) This subdivision does not diminish the liability of any person
15 under Section 107 or 111 of the Comprehensive Environmental
16 Response, Compensation, and Liability Act of 1980 (42 U.S.C.
17 Secs. 9607 and 9611).

18 (5) For purposes of this subdivision, “guarantor” means any
19 person, other than the owner or operator, who provides evidence
20 of financial responsibility for an owner or operator under this
21 section.

22 SEC. 2. The amendment of Section 25245 of the Health and
23 Safety Code made by this act does not constitute a change in, but
24 is declaratory of, existing law.